IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6865 OF 2002

Gammon India Limited, a Company incorporated under the Indian Companies Act, 1913, and having its Registered Office at Gammon House, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025. .. Petitioner (Org.Plaintiff)

Versus

1. Ashwin Daftary, residing at Radha Krishna Apartments, Flat No.31, 3rd Floor, Building No.1, N.C.Kelkar Road, Dadar, Mumbai - 400 028.

2. Mahesh Udani, Proprietor, Rajesh Travels, residing at Vaibhav Apartments, Prabhadevi, Mumbai - 400 025.

3. The Manager, Rajesh Travels, Shop No.4, Chawl No.474/78, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025. .. Respondents (Org.Defendants)

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Smt.Meena H.Doshi for the Petitioner.

Shri R.J.Thakkar for the respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 13th SEPTEMBER, 2004.

ORAL JUDGMENT:

1. Heard the learned advocate for the parties.

Rule. By consent, Rule made returnable forthwith.

Perused the records.

2. The petitioner challenges the order dated 7th February, 2001 passed in Int. Notice No.219 of 2001 in R.A.E.Suit No.342 of 1978 by the learned Judge of the Small Causes Court, Mumbai. By the impugned order, the application for amendment to the plaint filed by the petitioner has been dismissed on three grounds. Firstly that the recording of evidence of the petitioner / original plaintiff had been already concluded on 7th December, 2000. Secondly that the particulars which are sought to be disclosed cannot be allowed in view of the provisions of law comprised under Order VI Rule 5 of the Code of Civil Procedure and thirdly that there is unsatisfactory delay in filing the application for amendment to the plaint.

3. Upon hearing the learned advocates for the parties and on perusal of the records, it is seen that the suit was filed for eviction of the respondents on various grounds including the ground of bonafide need of the premises for the petitioner/ original plaintiff. Obviously, the plaintiff is required to prove that the need of the petitioner in that regard is reasonable and bonafide. It is undisputed fact that the pleadings in relation to the need of the premises for the petitioner did not give all the details and particulars about the requirements of the premises for the personal use and occupation of the petitioner. The application which was filed by the

petitioner for amendment to the pleadings, undoubtedly, disclosed various particulars regarding need of the premises for self occupation thereof by the petitioner. Reply thereto also discloses objection to the amendment to be carried out mainly being related to the stage at which the application was filed.

4. There is no dispute that the law which was applicable for consideration of the application for amendment was the one which was in force prior to the amendment brought about to the Code of Civil Procedure in the year 2002. Being so, there was no bar for allowing the amendment merely on the ground that the application was filed after commencement of the trial. It is well settled by number of decisions that mere delay in filing the application for amendment would not be a justification for rejection of amendment. It is also well settled that there is no presumption that the delay in filing the application is either deliberate or discloses lack of bonafide. On the contrary, unless it is established by the defendants that the plaintiff is interested in delaying the proceedings and merely on that count seeks to amend the pleadings, no inferences can be drawn adverse to the plaintiff. Being so, rejection of the application for amendment merely on the ground that it was filed at the late stage of the proceedings cannot be a

justifiable ground for rejection of the application for amendment to the plaint, more particularly when the proposed amendment is in the nature of clarification of the case already pleaded by the party. Undoubtedly, if the delay had resulted in accrual of right in favour of the respondents, and the same was sought to be defeated by the proposed amendment, then perhaps, it could have been a different story.

5. Undoubtedly, the suit is for eviction of the respondents from the premises on the ground of bonafide need of the premises. In case of bonafide need, it is necessary for the landlord to disclose particulars regarding the need of the premises. It is not a mere desire of the landlord that could establish bonafide requirement of the landlord. Being so, the landlord is expected to plead all the necessary particulars relating to bonafide and reasonable need of the premises for his occupation and to establish the same. Once it is apparent that the basic averments in relation to the bonafide need of the premises for self occupation having already been made in plaint, and since the petitioner by the application in question is seeking to give further and better particulars in relation to such need, it cannot be said that the provisions of Order VI Rule 5 of the Code of Civil Procedure would debar the plaintiff from

bringing those facts on record, even though they have been sought to be brought on record at belated stage but certainly before the conclusion of the trial. In case of the delay having resulted in any prejudice to the defendants, certainly the defendants can be compensated by way of costs for the same.

6. The finding of the lower court that the petitioner has completed recording of its evidence is not borne out from the records. The records only disclose that the P.W.1, who was examined on behalf of the petitioner, was discharged on completion of recording of his evidence. That does not mean that the petitioner is debarred from examining any further witness. Undoubtedly, as rightly submitted by the learned advocate for the respondents, in the absence of any list of witnesses being filed in advance, the petitioner would not be entitled to examine any witness as a matter of right and without the leave of the Court. However, on amendment being carried out, it may be necessary for the petitioner to examine the witness or witnesses. Undoubtedly, the petitioner will have to disclose identity of such witness or wittiness, as the case may be, well in advance and prior to the date of recording of such evidence.

7. It is therefore clear that the three grounds based on which the application for amendment has been

rejected are not sustainable and cannot be said to be justifiable ground and the exercise of the jurisdiction of the court below cannot be said to be in accordance with the provisions of law relating to the consideration of the application for amendment of the pleadings.

8. The proposed amendment being in the nature of further and better particulars relating to the plea of the plaintiff in respect of bonafide and reasonable need of the premises for personal occupation thereof, the same are necessary to decide the real question in controversy and therefore the application for amendment deserves to be allowed.

9. For the reasons stated above, the impugned order cannot be sustained and is liable to be quashed and set aside and is accordingly hereby quashed and set aside. The application filed by the petitioner for amendment to the plaint is hereby allowed subject to payment of costs of Rs.1,000/- to be paid to the respondents. Payment of costs shall be condition precedent to enable the petitioner to amend the plaint. On amendment being carried out, the respondents shall be entitled to file their additional written statement. Considering the fact that the suit relates to the year 1978, the trial Court is expected to dispose of the same as expeditiously as possible,

and in any case, on or before the 31st December, 2005, and in that regard, both the parties to the suit are required to extend necessary co-operation to the trial Court.

10. Rule is made absolute accordingly with no order as to costs.